IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

MISC. CIVIL APPLICATION NO.814 OF 2006
IN
CIVIL APPLICATION NO.5333 OF 2005
IN
SECOND APPEAL NO.480 OF 2005.

(Devidas Shivram Wadhokar & anr. Vs. Pralhad Motiram Ladhe & anr.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. A.S. Kilor, Advocate for Petitioners.
Mr. Anoop Dhore h/f. Mr. Anjan De, Advocate for Resp. No.1.

CORAM : R.C.CHAVAN, J.

DATED : JULY 09, 2007.

1. Heard.

2. This is an application for review of order dated 9th December, 2005 by which application of the appellants for stay of appellate decree had been rejected. The Appellate Court had set aside the judgment of Civil Judge Jr. Dn., Balapur in Regular Civil Suit No.92/2000 and held that there was a cart track and

had restrained the appellants from interfering in the respondents' user of the said cart track. While rejecting the appellants'' application for stay of this appellate decree it was observed that injunction was in operation in the trial Court till trial Court vacated it by dismissing the suit. It was further observed that the injunction must have been continued till the appellate judgment was delivered i.e. during pendency of the first appeal. Record shows that the appellants had not pressed the application for injunction before the First Appellate Court. However, fact remains that the appellate Court had eventually decreed the suit granting injunction in favour of the respondent.

3. In view of this, though the ground on which review is sought is not entirely baseless in the sense that one of the reasons given while refusing stay is an assumption that injunction must have been in force during pendency of the appeal and that such a statement was made in the reply filed by the respondent, it may be inappropriate to stay the operation of the decree permitting the respondents to use cart track, particularly in the present agricultural season. The appellant's apprehension

about the loss caused to him had already been taken care of in the order under review by observing that if eventually the appellants succeed they can get adequate compensation of the crop for the years in which the appeal would be pending.

4. While disposing of this application I will only add that the respondents shall furnish security in the sum of Rs.Fifty Thousand before the Civil Judge, within a month of this order for due performance of such decree that may be eventually passed.

5. If the security is not furnished within stipulated period month the applicant may move the Court again for further orders.

6. The application is disposed of accordingly.

JUDGE.

RR.